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CODE OF MARYLAND REGULATIONS

Title 34 DEPARTMENT OF PLANNING

Subtitle 04 HISTORICAL AND CULTURAL PROGRAMS

Chapter 07 Sustainable Communities Tax Credit Certifications

Authority: State Finance and Procurement Article, §5A-303, Annotated Code of Maryland

.01 Scope.

This chapter establishes procedures for certification of sustainable communities rehabilitations by the Director of the Maryland Historical Trust. Certification of a sustainable communities rehabilitation is an eligibility requirement for a taxpayer to claim a sustainable communities tax credit.

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Act" means State Finance and Procurement Article, §5A-303, Annotated Code of Maryland.

(2) "Amend" means to change for the better, improve, or correct.

(3) "Business entity" means:

(a) A person conducting or operating a trade or business in the State; or

(b) An organization operating in Maryland that is exempt from taxation under §501(c)(3) of the federal Internal Revenue Code.

(4) "Certified heritage area" has the meaning stated in Financial Institutions Article, §13-1101(d), Annotated Code of Maryland.

(5) Certified Historic Structure.

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(a) "Certified historic structure" means a structure that is located in the State and is:

- (i) Listed in the National Register of Historic Places;
- (ii) Designated as a historic property under local law and determined by the Director to be eligible for listing on the National Register of Historic Places;
- (iii) Located in a historic district listed on the National Register of Historic Places, or in a local historic district that the Director determines is eligible for listing on the National Register of Historic Places, and certified by the Director as contributing to the significance of the district; or
- (iv) Located in a certified heritage area and that has been certified by the Maryland Heritage Areas Authority as contributing to the significance of the certified heritage area.

(b) "Certified historic structure" does not include a structure that is owned by the State, a political subdivision of the State, or the federal government.

(6) "Certified rehabilitation" means a completed rehabilitation of:

- (a) A certified historic structure that the Director certifies is a substantial rehabilitation in conformance with rehabilitation standards of the United States Secretary of the Interior; or
- (b) A qualified rehabilitated structure.

(7) "Code" means the Annotated Code of Maryland.

(8) "Commercial rehabilitation" means a rehabilitation of a structure other than a single-family, owner-occupied residence.

(9) "Criteria for Listing" means the Secretary of the Interior's Criteria for Listing in the National Register of Historic Places, 36 CFR §§60.3 and 60.4, as amended, or successor criteria.

(10) "Director" means the Director of the Maryland Historical Trust.

(11) "Disqualifying work" means work that is performed on a certified rehabilitation, that if performed as part of the rehabilitation would have made the rehabilitation ineligible for certification.

(12) "Financial assistance" means action by the State or a State unit to award grants, loans, loan guarantees, or insurance to a public or private entity to finance, wholly or partly, a project that involves or may result in building construction, building alteration, or land disturbance.

(13) "High performance building" means a building that:

- (a) Meets or exceeds the current version of the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) green building rating system gold rating; or

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(b) Achieves at least a comparable numeric rating according to a nationally recognized, accepted, and appropriate numeric green building rating system, guideline, or standard approved by the Secretaries of Budget and Management and General Services under State Finance and Procurement Article, §3-602.1, Annotated Code of Maryland.

(14) Historic Property.

(a) "Historic property" means a district, site, building, structure, monument, or object significant to:

(i) The prehistory or history of the State; or

(ii) The upland or underwater archeology, architecture, engineering, or culture of the State.

(b) "Historic property" includes related artifacts, records, and remains.

(15) "Initial credit certificate" means a certificate that grants a business entity a tax credit under the Act.

(16) "Local historic district" means a district that the governing body of a county or municipal corporation, or the Mayor and City Council of Baltimore, has designated as historic under local law.

(17) "Main Street Maryland community" means:

(a) A commercial area in a local jurisdiction designated by the Secretary of Housing and Community Development as a Main Street Maryland community under the Main Street Maryland Program on or before January 1, 2010; or

(b) A commercial area in Baltimore City designated as a Main Street by the Mayor of Baltimore City on or before January 1, 2010.

(18) "Main Street Maryland Program" means the Maryland Main Street designation program for local jurisdictions established in COMAR.

(19) "National Register structure" means a structure that is:

(a) Listed on the National Register of Historic Places; or

(b) Located in a historic district listed on the National Register of Historic Places, and certified by the Director as contributing to the significance of the district.

(20) "Political subdivision" means a county or municipal corporation of the State.

(21) "Program" means the Sustainable Communities Tax Credit Program established by the Act.

(22) Qualified Rehabilitated Structure.

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(a) "Qualified rehabilitated structure" means a building, other than a single-family, owner-occupied residence, that will be substantially rehabilitated and:

(i) Is located in a Main Street Maryland community or, beginning in fiscal 2012, is located in a Main Street Maryland community or a sustainable community; and

(ii) After the rehabilitation process has 50 percent or more of the existing external walls of the building retained in place as external walls, 75 percent or more of the existing external walls of the building retained in place as internal or external walls, and 75 percent or more of the internal structural framework of the building retained in place.

(b) "Qualified rehabilitated structure" does not include a certified historic structure.

(23) "Qualified rehabilitation expenditure" means any amount that:

(a) Is properly chargeable to capital account;

(b) Is expended in the rehabilitation of a structure that, by the end of the calendar year in which the certified rehabilitation is completed, is a certified historic structure or a qualified rehabilitated structure;

(c) Is expended in compliance with a plan of proposed rehabilitation that has been approved by the Director; and

(d) Is not funded, financed, or otherwise reimbursed by any:

(i) State or local grant;

(ii) Grant made from the proceeds of tax-exempt bonds issued by the State, a political subdivision of the State, or an instrumentality of the State or of a political subdivision of the State;

(iii) State tax credit other than the tax credit provided for under the Act; or

(iv) Other financial assistance from the State or a political subdivision of the State, other than a loan that must be repaid at an interest rate that is greater than the interest rate on general obligation bonds issued by the State at the most recent bond sale prior to the time the loan is made.

(24) Rehabilitation.

(a) "Rehabilitation" means the process of returning a structure to a state of utility, through repair or alteration, which makes possible an efficient use while preserving those portions and features of the structure and its site and environment which make the structure and its site and environment historically, architecturally, or culturally significant.

(b) "Rehabilitation" does not include an alteration which is primarily remodeling.

(25) "Secretary" means the Secretary of Planning.

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(26) Single-Family, Owner-Occupied Residence.

(a) "Single-family, owner-occupied residence" means a structure or a portion of a structure occupied by the owner and the owner's immediate family as their primary or secondary residence.

(b) "Single-family, owner-occupied residence" includes a residential unit in a cooperative project owned by or leased to a cooperative housing corporation, as defined in Corporations and Associations Article, §5-6B-01, Annotated Code of Maryland, and leased for exclusive occupancy to, and occupied by, a member of the corporation and the member's immediate family under a proprietary lease.

(27) "Smart Growth Subcabinet" means the Smart Growth Subcabinet established under State Government Article, Title 9, Subtitle 14, Annotated Code of Maryland.

(28) "Standards for Certified Historic Structure Rehabilitation" means the Secretary of the Interior's Standards for Rehabilitation, 36 CFR §§67.7 and 67.6(b)(1)—(7), as amended, or successor standards. In those standards, any reference to the Secretary of the Interior shall mean the Director, the Internal Revenue Code shall mean Tax-General Article, Annotated Code of Maryland, and the Internal Revenue Service shall mean the Comptroller.

(29) "Standards for Evaluating Significance" means the Secretary of the Interior's Standards for Evaluating Significance within Registered Historic Districts, 36 CFR §67.5, as amended, or successor standards. In those standards, any reference to the Secretary of the Interior shall mean the Director and certified historic structure shall mean certified historic structure.

(30) "State unit" has the meaning stated in State Government Article, §11-101, Annotated Code of Maryland.

(31) "Substantial rehabilitation" means rehabilitation of a structure for which the qualified rehabilitation expenditures, during the 24-month period selected by the taxpayer ending with or within the taxable year, exceed:

(a) For single-family, owner-occupied residential property, \$5,000;

(b) For a qualified rehabilitated structure located in a Main Street Maryland community, the greater of:

(i) 50 percent of the adjusted basis of the structure, as determined under the provisions of Tax-General Article, Annotated Code of Maryland; or

(ii) \$25,000; or

(c) For all other property, the greater of:

(i) The adjusted basis of the structure, as determined under the provisions of Tax-General Article, Annotated Code of Maryland; or

(ii) \$25,000.

(32) "Sustainable community" means the part of a priority funding area that:

(a) Satisfies the requirements of Housing and Community Development Article, §6-205, Annotated Code of Maryland, as determined by the Smart Growth Subcabinet;

(b) Has been designated as a BRAC revitalization and incentive zone under Economic Development Article, Title 5, Subtitle 13, Annotated Code of Maryland; or

(c) Has been designated a transit-oriented development under Transportation Article, §7-101, Annotated Code of Maryland.

(33) "Taxpayer" means a business entity or individual that makes qualified rehabilitation expenditures.

(34) "Trust" means the Maryland Historical Trust.

.03 Procedures for Certification of Certified Historic Structures.

A. A taxpayer may request that a structure be certified by the Director as a historic structure by filing an application for certification with the Director. An application shall be filed on standard forms available from the Trust. An incomplete application may not be processed until all required application information has been received.

B. The Director shall determine whether the structure for which a complete application is received meets the Criteria for Listing or Standards for Evaluating Significance. If the structure meets the Criteria for Listing or Standards for Evaluating Significance, the Director shall approve the application. If the structure does not meet the Criteria for Listing or Standards for Evaluating Significance, the Director shall disapprove the application.

C. The Director promptly shall send the applicant notice that the application has been approved or disapproved.

.04 Procedures for Certification of Certified Historic Structure Rehabilitations.

A. A taxpayer may file an application with the Director requesting the Director to determine that a proposed substantial rehabilitation, if completed in accordance with the requirements of the Program, will qualify as a certified rehabilitation. If the rehabilitation is a commercial rehabilitation, the application shall request that the Director award the rehabilitation an initial tax credit certificate stating the maximum amount of credit for which the rehabilitation may qualify. An application shall be filed on standard forms available from the Trust. For a commercial rehabilitation, the application may be filed in any year between January 1 and June 30 or a later date published by the Trust. An application shall include documentation that the applicant has received commitments for all project funding other than the amount of the credit for which the rehabilitation may qualify. An incomplete application may not be processed until all required application information has been received. If the required application information is not received

within a reasonable time, as determined by the Trust, the incomplete application shall be returned to the applicant. The Director may not accept an application for a commercial rehabilitation if:

- (1) At the time the application is received, any substantial part of the rehabilitation has begun which the Director determines was not necessary to prepare the application or to meet an emergency; or
- (2) The applicant in that year has previously submitted three or more applications for commercial rehabilitations that in total exceed \$500,000.

B. Applications for approval of plans for commercial rehabilitation shall be competitively ranked. Ranking shall be based on the following criteria:

- (1) If the structure is a certified historic structure, the extent to which the structure is a rare example of structures designated as historic primarily on the basis of the same historic significance;
- (2) If the structure is a certified historic structure, whether the structure is:
 - (a) Protected by a historic preservation easement held by the Trust; or
 - (b) Subject to preservation conditions or restrictions through a Memorandum of Understanding or Programmatic Agreement with the Trust;
- (3) Whether the structure is located in a jurisdiction that has been historically underrepresented in the award of tax credits for commercial rehabilitation based on the number of National Register structures in each jurisdiction;
- (4) Beginning in fiscal 2012, whether the structure is located in a sustainable community approved by the Smart Growth Subcabinet;
- (5) Whether the structure is located in an area where the political subdivision has implemented regulatory streamlining or other development incentives that foster redevelopment and revitalization in priority funding areas, as defined in State Finance and Procurement Article, Title 5, Subtitle 7B, Annotated Code of Maryland, and the appropriate local governing body, or the planning board or commission if designated by the local governing body, has certified those regulatory streamlining or other development incentives to the Smart Growth Subcabinet;
- (6) Whether the rehabilitation will include affordable and workforce housing options;
- (7) If the structure is a qualified rehabilitated structure, whether the structure is more than 50 years old;

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(8) Whether the structure is located in an area targeted by the State for additional revitalization and economic development opportunities due to the focusing of State resources and incentives;

(9) Whether the rehabilitation is consistent with and advances current growth and development policies and programs of the State identified by the Director in consultation with the Secretary of Planning;

(10) If the structure is a certified historic structure, the extent to which the rehabilitation:

(a) Sustains the existing form, integrity, and material of the structure; or

(b) By removing later work or replacing missing earlier work, accurately recovers the form and details of the structure as it appeared at the period of time for which the structure is historically significant;

(11) The extent to which qualified rehabilitation expenditures for the rehabilitation will exceed the assessed value of the structure; and

(12) The extent to which the need for rehabilitation of the structure is urgent.

C. The Director may assign differing weights to the criteria set forth in §B of this regulation.

D. The Director shall:

(1) Determine whether the proposed substantial rehabilitation of a certified historic structure for which a complete application is received under §A of this regulation meets the Standards for Certified Historic Structure Rehabilitation;

(2) Determine whether the proposed substantial rehabilitation of the exterior of a qualified rehabilitated structure that is located in, or adversely affects, designated historic districts or districts determined by the Director to be eligible for listing on the National Register of Historic Places, for which a complete application is received under §A of this regulation, is compatible with the Standards for Certified Historic Structure Rehabilitation;

(3) For a rehabilitation of a single family, owner-occupied residence, determine that the credit amount will not exceed \$50,000; and

(4) For a commercial rehabilitation:

(a) Determine that the qualified rehabilitation expenditures estimated for the rehabilitation do not exceed \$3,000,000;

(b) Determine whether the plans for rehabilitation rank competitively under §B of this regulation to qualify for an award of available credits;

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- (c) Determine whether the plans for rehabilitation will qualify the structure as a high performance building;
- (d) Determine that the rehabilitation will establish an external marker, or, at a minimum, an internal marker, that identifies that the rehabilitation was funded by the Program;
- (e) Except as provided in §E of this regulation, award initial credit certificates for available credits to those rehabilitation plans that rank competitively, in the order those rehabilitation plans meet the criteria of §D(3)(a) of this regulation; and
- (f) Promptly send the applicant notice of the determination and any award of a commercial rehabilitation initial credit certificate.

E. For any State fiscal year:

- (1) The total credit amount of commercial rehabilitation initial credit certificates awarded by the Director to rehabilitations in a single county or Baltimore City for any State fiscal year may not exceed 75 percent of the credits available for award in that fiscal year, except that, if the aggregate credit amounts under initial credit certificates issued in the fiscal year total less than the amount appropriated for that fiscal year, any excess amount may be issued under initial credit certificates for projects in any county or Baltimore City;
- (2) Not more than 10 percent of the total credit amount of initial credit certificates issued for any fiscal year may be issued for projects that are qualified rehabilitated structures;
- (3) The credit amount of an initial credit certificate for a commercial rehabilitation may not exceed the lesser of the maximum amount of qualified rehabilitation expenditures specified in the application for approval of plans for rehabilitation or \$3,000,000, including qualified rehabilitation expenditures for:
 - (a) The phased commercial rehabilitation of the same structure or property;
 - (b) The separate rehabilitation of different components of the same structure or property; and
 - (c) The rehabilitation of multiple structures that are functionally related to serve an overall purpose;
- (4) The credit amount for a rehabilitation of a single-family, owner-occupied residence may not exceed \$50,000;
- (5) The Director may not approve an application for approval of:
 - (a) Proposed plans for rehabilitation of a single-family, owner-occupied residence until the applicant pays an administrative fee of \$10; and

(b) A completed rehabilitation of a single-family, owner-occupied residence until the applicant pays an administrative fee not to exceed 3 percent of the qualified rehabilitation expenditures for the rehabilitation, as described in the application or by public notice posted on the Trust's website, less the \$10 fee previously paid; and

(6) The Director may not issue an initial credit certificate until the applicant pays an administrative fee not to exceed 3 percent of the initial credit certificate award, as described in the application or by public notice posted on the Trust's website. If the fee is not received by the Trust within 120 days after the Trust sends notice that the fee is due, any reservation of an award of an initial credit certificate for the rehabilitation shall expire.

F. At any time before completion of a substantial rehabilitation, an applicant may amend an application under §A of this regulation. The amended application shall be processed as provided in §A of this regulation.

G. If the Director previously has approved a proposed plan of rehabilitation, a taxpayer may file an application with the Director requesting the Director to issue a certificate that a completed substantial rehabilitation is a certified rehabilitation. An application shall be filed on standard forms available from the Trust. An incomplete application may not be processed until all required application information has been received. The Director may not certify a rehabilitation if the applicant does not state under oath in the application the amount of the applicant's qualified rehabilitation expenditures. An initial credit certificate awarded under §D(4)(e) of this regulation shall expire, and the Director may not certify a commercial rehabilitation as a certified rehabilitation, if the rehabilitation has not begun and the applicant has not notified the Trust within the 18 months after the initial credit certificate is issued, or, except for reasonable cause, as determined by the Director, the rehabilitation is not completed within 30 months after the initial credit certificate is issued.

H. The Director shall determine whether the substantial rehabilitation certification application under §G of this regulation meets the Standards for Certified Historic Structure Rehabilitation and whether the rehabilitated structure qualifies as a high performance building, and promptly send the applicant notice of the determination. The Director may inspect the rehabilitation to determine whether the rehabilitation as completed meets the Standards and qualifies as a high performance building.

.05 Administrative Review.

A. An applicant whose application has been disapproved or approved with conditions by the Director's designee under Regulation .03 or .04 of this chapter may file a written request for reconsideration with the Director within 30 days after the notice of disapproval or approval with conditions is sent.

B. The Director shall review the request within 60 days after receipt of the request. If the Director determines that the application filed under Regulation .03 or .04 meets the standards set forth in that regulation, the application shall be considered approved. If the Director determines that the application

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filed under Regulation .03 or .04 does not meet the standards set forth in that regulation, the application shall be disapproved or approved with conditions. The Director shall promptly notify the applicant of the Director's determination.

C. An applicant whose application has been disapproved or approved with conditions by the Director under Regulation .03 or .04 of this chapter or §B of this regulation may file a written request for reconsideration with the Board of Trustees of the Trust within 30 days after the notice of disapproval or approval with conditions is sent.

D. The request for reconsideration of the Director's action under Regulation .04 of this chapter or §B of this regulation is deemed delegated to the Director for review and determination if:

(1) The application was filed without:

(a) The applicant first filing an application for determination that the proposed substantial rehabilitation meets the Standards for Certified Historic Structure Rehabilitation; and

(b) The Director or the Director's designee having notified the applicant that the Director or the Director's designee determined that the proposed substantial rehabilitation meets the Standards; or

(2) The substantial rehabilitation was substantially complete at the time the application for certification of the substantial rehabilitation was filed.

E. A request for reconsideration deemed delegated to the Director under Regulation .05D of this chapter may be considered by the Director only if the request includes:

(1) Information that the Director determines:

(a) Is relevant to the determination;

(b) Was not included in the application disapproved or approved with conditions; and

(c) May alter the determination; or

(2) Substantial credible evidence that the process for review of applications under Regulation .03B, or .04D or H, of this chapter has not been followed, which the Director concludes may alter the determination.

F. The Board of Trustees of the Trust shall review the request within 60 days after the receipt of the request. If the Board determines that the application filed under Regulation .03 or .04 of this chapter meets the standards set forth in that regulation, the application shall be deemed approved. If the Board determines that the application under Regulation .03 or .04 does not meet the standards set forth in that regulation, the application shall be deemed disapproved or approved with conditions. The Director shall promptly notify the applicant of the Board's determination. The determination of the Board shall be final and not a contested case within the meaning of State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.

G. The Board of Trustees of the Trust may delegate to the Director any review and determination under this regulation.

.06 General Provisions for Determining Disqualifying Work.

On the request of the Comptroller, the Director shall determine whether work performed on a certified rehabilitation after certification of the rehabilitation, if performed as part of the rehabilitation, would have made the rehabilitation ineligible for certification and shall promptly notify the Comptroller.

.07 General Provisions.

A. Program Administration.

(1) The Director's designee may take any action or make any decision required or permitted to be taken or made by the Director under this chapter.

(2) The Director may establish operational handbooks or manuals governing matters relating to administration of this chapter including descriptive statements of procedures which do not directly affect the rights of the public or procedures otherwise available to the public.

B. Waiver. The Secretary may waive or vary particular provisions of this chapter if:

(1) The waiver or variance is not inconsistent with the Act and other pertinent legal authorizations, if any;

(2) In a written determination of the Secretary, the application of a regulation in a specific case or in an emergency situation would be inequitable or contrary to the purposes of the Act; and

(3) The Office of the Attorney General approves the waiver for form and legal sufficiency.

C. False Statements. An applicant who knowingly makes or causes to be made a false statement that is material to an action taken by the Director or the Director's designee under this chapter is subject to revocation of any certifications under this chapter made in reliance on the false statement, and any other penalties applicable under the law.

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Administrative History

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